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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/724,761 11/28/00 MACGREGOR

G 2779 *SM*

EXAMINER

PM82/0914

PEDERSEN AND COMPANY, PLLC
P.O. BOX 2666
BOISE ID 83701-2666

BARTZ, C

ART UNIT

PAPER NUMBER

3613

DATE MAILED:

7
09/14/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/724,761

Applicant(s)

MACGREGOR

Examiner

C. Bartz

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on 7/31/01

2a) ☐ This action is FINAL.

2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1-35 is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) ☒ Claim(s) 31-35 is/are allowed.

6) ☒ Claim(s) 1-30 is/are rejected.

7) ☒ Claim(s) 7-10, 25-30 is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirements.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☐ All b) ☐ Some* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) ☒ Notice of References Cited (PTO-892)

16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2,6

18) ☐ Interview Summary (PTO-413) Paper No(s) _____

19) ☐ Notice of Informal Patent Application (PTO-152)

20) ☐ Other:

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Part III DETAILED ACTION

Double Patenting

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

Claim 1 - 26 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 - 9 of copending Application No. 09/521,824. Although the conflicting claims are not identical, they are not patentably distinct from each other because they differ only in that the structure of claim(s) 1 for example, in both sets of claim(s); are limited in the parent application only by specifically reciting a solenoid valve, air line, parking brake, et al.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize a broadly claimed brake mechanism, since the specific elements recited in the parent application are not specifically required for the invention to perform the claimed function, and thus the claimed function (safety system) may be performed by the use of a broadly recited brake mechanism.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Specification

- 2. The abstract of the disclosure is objected to because it is over the required 250 words. Correction is required. See MPEP § 608.01(b).**
- 3. Applicant is reminded that the file history of the case must be inserted in the specification, i.e. the status of all the parent applications needs to be indicated in the instant specification. Applicant is further reminded that an amendment cannot itself be amended.**

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Claim Rejections - 35 USC § 112 - 2

4. Claim(s) 1 - 30 is(are) rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to parent claims 1, 27: applicants claim in the preamble (for example parent claim 1, line 1) "a safety system for use...vehicle" , and for example in places such as line 6; << safety system ...comprising >>... sensors at stations in the vehicle.

It becomes unclear from the discrepancy in the preamble (safety system for use...vehicle - which is a statement of intended use), and the positive connection of part of the device to a part of the vehicle; whether applicant intends to claim the subcombination of just the safety system, or the combination of the safety system and the vehicle.

Applicant could overcome this indefinite type rejection and particularly claim the subcombination, by inserting an appropriate phrase in all the necessary places: such as for example using the phrase -- adapted to be at stations in the vehicle --; in place of the phrase "at stations in the vehicle".

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As to claim 26: at the phrase at the end of the last line is indefinite in that the word << least >> is used to modify the limitation << 1 to 2 seconds >>.

When a word of degree is used to modify a limitation, it is necessary to determine whether the specification provides some standard for measuring that degree. See *Seattle Box Company, Inc. V. Industrial Crating & Packing, Inc.*, 731 F.2d 818, 221 USPQ 568 (Fed. Cir. 1984). In this case, the specification does not enable one skilled in the art to reasonably establish what may be construed as being within the metes and bounds of the limitation as modified by the word of degree. Therefore, one of ordinary skill in the art would not be apprised as to the claimed invention's scope when the claims are read in light of the specification. See *Ex parte Oetiker*, 23 USPQ2d 1641.

The dependent claims are rejected under 35 USC 112 as incorporating the defects of the claims from which they depend.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. **Claim(s) 1, 11, is(are) rejected under 35 U.S.C. § 102(b) as being anticipated by Miyake '768 (cited by applicant).**

Miyake discloses management mechanism 10; sensors 11, 12, 13; controller 30; with respect to claim 11, Fig. 11 discloses the claimed structure.

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Claim Rejections - 35 USC § 103

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103, the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 C.F.R. § 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of potential 35 U.S.C. § 102(f) or (g) prior art under 35 U.S.C. § 103.

8. The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

9. **Claim(s) 2, 12, 13, 24, is(are) rejected under 35 U.S.C. § 103 as being unpatentable over Miyake.**

Miyake discloses all the structure of the claimed device as detailed above: except for a sensor adapted to sense equipment location; mechanical brake linkage/cable; operator release structure.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize a sensor adapted to sense equipment location; mechanical brake linkage/cable; operator release structure:

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since the examiner takes Official Notice that sensors adapted to sense equipment location; a mechanical brake linkage/cable; and operator release structure: are known in the brake safety controller art and it would be within the level of ordinary skill in the art for a routineer to combine these types of structures with Miyake so as to improve the 4 utilization of the brake structure of Miyake.

10. Claim(s) 3, 4, 5, 6, 14 - 23, is(are) rejected under 35 U.S.C. § 103 as being unpatentable over Miyake in view of Dombrowski or Fontaine '869 or Shyu '608.

Miyake discloses all the structure of the claimed device as detailed above; except for the specific structures recited in the abovelisted claims. Dombrowski or Fontaine '869 or Shyu '608 is relied upon merely to show that it is known in the art to provide the specific structures recited in the abovelisted claims (see particularly Dombrowski 32, or Fontaine Fig 11 disclosing a variety of sensors at the upper right side corner, or Shyu Fig 4 which discloses a further variety of sensors at the upper right side corner). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the apparatus of Miyake with sensors

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such as disclosed in Dombrowski or Fontaine '869 or Shyu '608; for the purpose of having a more comprehensive safety system.

Allowable Subject Matter

11. Claim(s) 7, 8, 9, 10, 25, 26, 27 - 30 would be considered allowable if rewritten to correct any objections; or overcome any applicable rejections, under 35 USC 112; and to include all the limitations of the base claim and any intervening claims.

Conclusion

12. In Kaner, note processing unit 16.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Bartz whose telephone number is (703)308 - 2564. The examiner can normally be reached on Mondays thru Fridays from 8:30 am to 3:30 pm.

(clifford.bartz@uspto.gov) [Fax -(703)308 - 3519]

If attempts to reach the examiner by telephone are unsuccessful; a message may be left at the Group Receptionist, whose telephone number is (703) 308 - 1113).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bob Oberleitner, can be reached on (703) 308 - 2569.

Any further inquiry of a general nature or relating to the status of this application may also be directed to the Group Receptionist, whose telephone number is (703) 308 - 1113.

Clifford T. Bartz
Examiner

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Summary:

Total claims	= 1 - 35
Allowed claims	= 31 - 35
Rejected claims	= 1 - 30
Objected claims	= 7, 8, 9, 10, 25, 26, 27 - 30